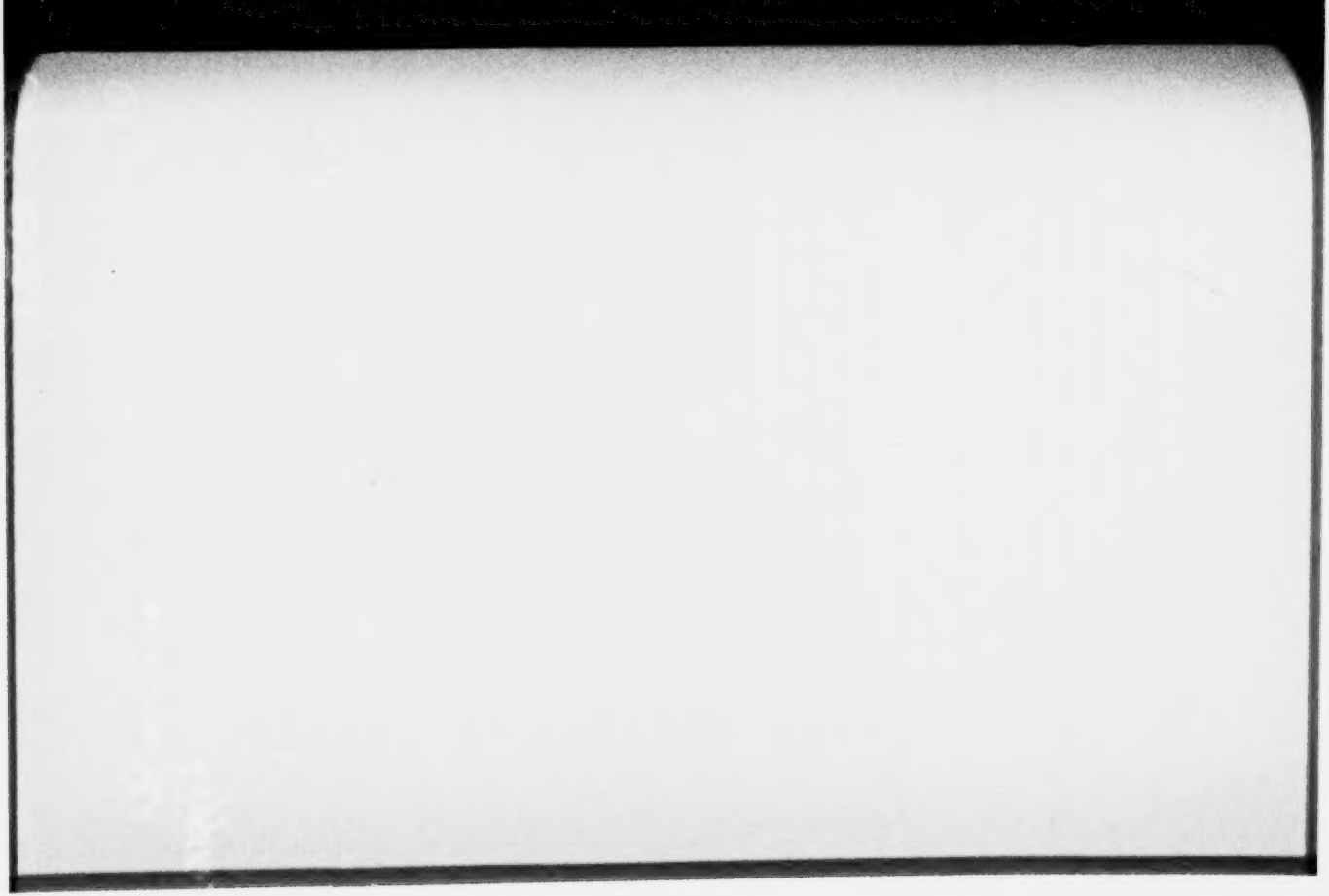


Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 263.

JOHN ROMIG AND DANIEL W. HARDING,
APPELLANTS,

vs.

MYRTLE GILLETT.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

Supplemental Brief on Behalf of Appellants in Resistance of Motion to Dismiss.

FACTS.

Motion to dismiss this appeal was made and submitted at the last term of court. It was therein insisted that the record failed to show affirmatively the jurisdictional sum or value in dispute. That allegation is completely refuted by the record (*R.*, *2*, *3*), and is uncontradicted. The motion was by the court postponed until hearing on the merits.

Appellee, in a supplemental brief recently filed, again

presses the motion, and now insists that the judgment is not final, thus stating the contention:

"It is merely an interlocutory order, setting aside a judgment in the district court of Garfield county, Oklahoma Territory, in an action for the foreclosure of a mortgage for $700" (*Appellee's Brief, p. 12*).

In reply to such contention, the attention of the court is asked to the brief heretofore filed in resistance of said motion, and also to the following additional considerations:

December 18, 1896, judgment entered, decreeing sale to satisfy mortgage, etc. (*R., 18–20*).

February 23, 1897, property sold to John Romig; sale confirmed March 1, 1897 (*R., 22–26*).

March 9, 1897, conveyance by sheriff to said purchaser (*R., 27–29*).

March 9, 1897, conveyance by John Romig to Daniel W. Harding (*R., 27–29*).

May 11, 1898, motion filed on behalf of Myrtle Gillett, "*to set aside the judgment* in said cause rendered against her on the 18th day of December, 1896, in above court, *and all proceedings had thereunder*" (*R., 29*).

April 15, 1899, judgment and decree of the said district court—

"that said judgment is void; that the order of sale, advertisement of sale, report of sale, and the sheriff's deed thereunder are each and all wrongful and void; *and that said judgment, order of sale, advertisement, sale, report of sale, and sheriff's deed are each and all set aside and held for naught*" (*R., 40, 41*).

June 21, 1889, supplemental judgment and decree directing the eviction of Harding from the property, and to reinstate appellee in possession, etc. (*R., 44, 45*).

June 30, 1900, judgment and decree *affirmed*, on appeal to the supreme court of the Territory (*R., 53, 54*).

Under this state of the record, the question is raised by appellee whether the judgment here under review is *final?*

The mere fact that the foreclosure suit involved a mortgage indebtedness of $700, interest and costs, is not here material or important. The mortgage was foreclosed, the property was sold, and the proceeds arising therefrom applied to the satisfaction of the mortgage. Harding became the purchaser of the property *in consequence* of said sale in foreclosure, and thereupon proceeded to convert it from unimproved prairie land by erecting thereon a residence, buildings, etc., until, at the time of the appeal herein, it had become of the value of $5,500, exclusive of costs (*R., 1–3*).

The judgment here under review was not one simply setting aside a judgment in foreclosure and remanding the case to be proceeded in *de novo* in the foreclosure suit (as claimed by appellee). It had passed far beyond that stage. The court undertook to decree absolutely null and void, and to set aside and hold for naught, not only the *judgment* in foreclosure, but the *sale and conveyance* made thereunder; and, further, to evict Harding from his possession of the property.

In short, it undertook to *finally* deprive appellant Harding of property worth at least $5,500, and to finally and for all time vacate and set aside his title thereto.

It would be difficult to conceive of any judgment more completely and effectually *final*, so far as Harding's rights are concerned, than said action of the court.

In appellants' brief herein on the merits, it is shown that such action was in utter defiance of the express statutory provisions of Oklahoma, which, having authorized the reversal of judgments under certain conditions, add:

"But the title to any property, the subject of the judgment or order sought to be opened, which by it, *or in con-*

sequence of it, shall have passed to a purchaser in good faith, shall *not* be affected," etc. (§ *77*).

* * * * * * *

"Such reversal shall not defeat or affect the title of the purchaser or purchasers," etc. (§ *482*).

* * * * * * *

"Where a judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment" (§ *590*).

* * * * * * *

"Any person in quiet possession of any land, and holding the same under sale and conveyance made * * * in pursuance of any order of court or decree in chancery, where lands are or have been directed to be sold, * * * shall not be evicted or thrown out of possession * * * until * * * paid the full value of all lasting and valuable improvements made," etc. (§ *620*).

These rights, so expressly secured and reserved to appellant by statute, were denied him and ignored, thus *finally* disposing of his rights and dispossessing him of his property.

The argument advanced in support of the motion to dismiss proceeds upon the theory that the judgment was one of *reversal* only, and authorities are cited to show that such judgments are not appealable.

Such authorities, however, are not applicable to the situation here presented. Here the appellant is finally deprived of his title and property (worth in excess of the jurisdictional amount), and from that judgment he has appealed. That judgment decides the title to the property in dispute; it annuls the judgment and sale in foreclosure, as well as the deed through and under which he claims; it also directs the property to be delivered to appellee and awards execution. It matters not that the main cause of action may still remain pending between the original parties.

It has been repeatedly held that where rights are thus finally disposed of the action of the court is final and appealable.

Thus, in Whiting *v.* Bank (*3 Pet., 15*) it was held that a decree of foreclosure and sale is final, from which an appeal may be taken, without awaiting the return and confirmation of the sale. (See, also, Ray *v.* Law, *3 Cranch U. S., 179*; Bronson *et al v.* Railroad Co., *2 Black U. S., 524.*)

In Blossom *v.* R. R. Co. (*1 Wall., 655*) it was held that a purchaser at judicial sale makes himself thereby so far a party to the proceedings that he has a right of appeal in respect of all matters adjudicated after his bid.

In Williams *v.* Morgan (*111 U. S., 684*) the right of such purchaser to be heard on the question of compensation to trustees and others, both in the trial and appellate courts, is affirmed.

In Kneeland *v.* Trust Co. (*136 U. S., 89*) the right of such purchaser to be heard, both in the trial court and on appeal, is recognized and affirmed.

In Mining Co. *v.* Mason (*145 U. S., 349*) an appeal was entertained by one who interposed, after confirmation, for the purpose of setting aside the sale and opening the biddings upon an advance bid made by himself.

See also Magann *v.* Segal (*92 F. R., 252*).

In Forgay *v.* Conrad (*6 How., 201*) it was held that the decree deciding the title there in dispute, annulling certain deeds under which certain of the defendants claimed, directing the property to be delivered to complainant, and awarding execution, was final, although the decree retained the cause for the purpose of taking certain accounts as between complainant and certain other defendants.

The same thing was reaffirmed in Thomson *v.* Dean (*7 Wall., 342*).

The same question of jurisdiction has frequently arisen in connection with intervening petitions and orders dismissing the same. Such judgments are uniformly held to be appealable, because such action completely and finally disposes of

the severable right and interest asserted, although the suit between the original parties is still pending undetermined.

See Standley *v.* Roberts (*59 F. R. 836*) and the authorities cited in the opinion.

Also—

Grant *v.* Lowe (*89 F. R., 881*).
Trust Co. *v.* R'y Co. (*48 id., 850*).
Grant *v.* R. R. Co. (*50 id., 795*).
Potter *v.* Beal (*50 id., 860*).
Withenbury *v.* U. S. (*5 Wall., 819*).
Hill *v.* R. R. Co. (*140 U. S., 52*).

So, also, in Gumbel *v.* Pitkin (*113 U. S., 545–548*), where a third party (Gumbel) had intervened in a certain action for the purpose of claiming a prior lien upon property attached in that suit and in the hands of the sheriff, his intervening petition was dismissed, and he thereupon prosecuted a writ of error to this court. Motion was made to dismiss upon the ground that the judgment appealed from was not reviewable as final. This court declined to so hold, and stated:

"The order dismissing Gumbel's intervention disposes of his rights, and is a final judgment as to that issue, as to which he has a right to writ of error. The order distributing the proceeds of the sale is also final, as it disposes of the fund."

As was stated by this court in Bebee *et al. v.* Russell (*19 How., 283*):

"When a decree finally decides and disposes of the whole merits of the cause, and reserves no further questions or directions for the future judgment of the court, so that it will not be necessary to bring the cause again before the court for its final decision, it is a final decree."

The present case comes precisely within that definition; the court, by final decree of the highest tribunal of the Territory, has vacated and held for naught the title of appellant, and ordered his eviction from the property, thus finally disposing of his rights and settling for all time the controversy as between him and appellee.

That action was certainly a *final* adjudication, and as such reviewable on appeal.

The motion to dismiss should be *overruled.*

Respectfully submitted.

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